



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Muneer Alam
d/b/a North Elm Street Mobil
1602 North Elm Street
Manchester, NH 03104

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
NO. AF 04-004**

February 12, 2004

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing ("Notice") is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Muneer Alam d/b/a North Elm Street Mobil, pursuant to RSA 147-A:17-a and Env-C 601.05. The Division is proposing that fines totaling \$4,062.87 be imposed against Muneer Alam d/b/a North Elm Street Mobil for the violations alleged below. This Notice contains important procedural information. Please read the entire notice carefully.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Muneer Alam is an individual doing business as North Elm Street Mobil ("Mobil") having a mailing address of 1602 North Elm Street, Manchester, NH 03104.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIM(S)

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 - 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Draper Energy Co., Inc. is the owner of land at 1602 North Elm Street, Manchester, NH, more particularly described in a deed recorded in the Hillsborough County Registry of Deeds at Book 5802, Page 1570, and identified on Manchester Tax Map 161 as Lot 03 ("the Site").
4. Mobil operates an automotive repair station and a gas station at the Site.

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-2502 • Fax: (603) 271-2867 • TDD: Access: Bell NH 1-800-735-2064

5. On November 26, 2003, Division personnel received a complaint alleging improper management of hazardous waste at the Site.
6. On December 4, 2003, Division personnel conducted an inspection of the Site. The purpose of the inspection was to determine Mobil's compliance status relative to RSA 147-A, and the Hazardous Waste Rules.
7. During the December 4, 2003 inspection, Division personnel learned that Mobil generates used oil from oil changes conducted on vehicles at the Site.
8. During the December 4, 2003 inspection, Division personnel observed a 275-gallon tank labeled "Waste Oil". The ground surrounding the tank was covered with spill sorbent and the sides of the tank were oily. The tank was open at the top with a large funnel sitting inside the opening.
9. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.
10. Mobil uses a parts washer containing petroleum naphtha to clean automotive parts. Petroleum naphtha has a flash point of -40°F to -86°F.
11. Env-Wm 403.03(b)(1) specifies that any waste with a flash point of less than 140°F is a hazardous waste exhibiting the characteristic of Ignitability, with an assigned EPA hazardous waste number of D001.
12. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."
13. Muneer Alam d/b/a North Elm Street Mobil is a generator of hazardous waste as defined by RSA 147-A:2, VI.
14. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.
15. The tank identified in Paragraph C.8 was not labeled in accordance with Env-Wm 807.06(b)(4).
16. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.
17. The tank identified in Paragraph C.8 was not closed and sealed.

18. Env-Wm 807.06(b)(6) requires used oil generators to manage containers of used oil in such a manner as to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or into ground or surface waters.

19. Muneer Alam d/b/a North Elm Street Mobil did not prevent spillage of used oil.

20. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."

21. The stained soil and spill sorbent identified in Paragraph C.7 represents a discharge of hazardous waste that requires the generator to clean up the discharge.

22. As a result of the December 4, 2003 inspection, the Division issued a Report of Initial Complaint Investigation ("RICI") dated December 4, 2003, to a representative of Mobil advising Mobil to remove the spill sorbent and dispose of the spill sorbent at a permitted waste disposal facility; label the used oil tank with the words "Used Oil for Recycle"; and seal the used oil tank within two weeks.

23. On December 24, 2003, Division personnel conducted a follow-up inspection of the Site. At the time of the inspection, Mobil had not completed any of the items requested in the RICI.

24. During the December 24, 2003 inspection, a representative of Mobil removed the funnel from the tank and replaced it with a rag. Division personnel advised the Mobil representative that this was not an acceptable means of closing the tank. The Mobil representative stated that the rag would be replaced with a cap.

25. On December 31, 2003, Division personnel conducted a second follow-up inspection of the Site. During the inspection, Division personnel noted that the tank was now sealed with a cap, however, the tank had not been labeled, and the spill sorbent had not been cleaned-up and removed. There was no snow or ice present around the tank at the time of the inspection to prevent clean-up.

26. On December 31, 2003, Division personnel conducted a file review of Mobil at the Division Reporting Information Management Section ("RIMS"). During the file review the following items were noted:

- a. On August 7, 2003, RIMS personnel issued a letter to Mobil rescinding Mobil's EPA Identification Number. Mobil obtained its EPA Identification Number by phone and did not submit the necessary notification paperwork to RIMS within 30 days as required.
- b. Mobil has shipped off hazardous waste since being informed that its EPA Identification Number had been rescinded. Mobil shipped hazardous waste off-site on August 14, 2003 and November 25, 2003.
- c. On August 13, 2002, RIMS sent Mobil its 2002 Second Quarter Hazardous Waste Quarterly Report ("Quarterly Report").

- d. On September 27, 2002, RIMS sent Mobil a letter advising Mobil that it was delinquent in submitting its 2002 Second Quarter Quarterly Report. Mobil had accrued a late fee of \$12.00 for failing to submit a signed Quarterly Report.
- e. On November 26, 2002, RIMS sent a second letter to Mobil advising Mobil that it was delinquent in submitting its 2002 Second Quarter Quarterly Report. Mobil had accrued a late fee of \$72.79 for failing to submit a signed Quarterly Report.
- f. On January 6, 2003, RIMS sent Mobil a third letter advising Mobil that it was delinquent in submitting its 2002 Second Quarter Quarterly Report. Mobil had accrued a late fee of \$114.58 for failing to submit a signed Quarterly Report.
- g. In January 27, 2003, RIMS received the delinquent 2002 Second Quarter Quarterly Report from Mobil. Mobil did not submit the late fee payment of \$114.58 with the delinquent Quarterly Report.
- h. On February 12, 2003, RIMS sent Mobil its 2002 Fourth Quarter Quarterly Report.
- i. On April 17, 2003, RIMS sent Mobil a letter advising Mobil that it was delinquent in submitting its 2002 Fourth Quarter Quarterly Report. Mobil had accrued a late fee of \$31.00 for failing to submit a signed Quarterly Report.
- j. On July 14, 2003, RIMS sent Mobil a second letter advising Mobil that it was delinquent in submitting its 2002 Fourth Quarter Quarterly Report. Mobil had accrued a late fee of \$119.00 for failing to submit a signed Quarterly Report.
- k. On July 20, 2003, Mobil submitted its delinquent 2002 Fourth Quarter Quarterly Report to RIMS. Mobil did not submit the late fee payment of \$60.29 (50% of \$119.00 because the Quarterly Report was submitted within 5 days receipt of the letter) with the delinquent Quarterly Report.
- l. On August 13, 2003, RIMS sent Mobil its 2003 Second Quarter Quarterly Report.
- m. On October 29, 2003, RIMS sent Mobil a letter advising Mobil that it was delinquent in submitting its 2003 Second Quarter Quarterly Report. Mobil had accrued a late fee of \$44.26 for failing to submit a signed Quarterly Report.
- n. On January 5, 2004, RIMS sent Mobil a second letter advising Mobil that it was delinquent in submitting its 2003 Second Quarter Quarterly Report. Mobil had accrued a late fee of \$112 for failing to submit a signed Quarterly Report.
- o. On November 7, 2003, RIMS sent Mobil its 2003 Third Quarter Quarterly Report.
- p. On January 5, 2004, RIMS sent Mobil a letter advising Mobil that it was delinquent in submitting its 2003 Third Quarter Quarterly Report. Mobil had accrued a late fee of \$26 for failing to submit a signed Quarterly Report.

27. Env-Wm 504.01(c) states "Generators shall submit a notification form for each on-site location where hazardous waste activity is conducted."
28. As of the date of this Notice, Mobil has not submitted a notification form to the Division.
29. Env-Wm 512.02(i) states the generator shall submit to the department each quarterly activity report along with the appropriate fee within 30 days from receipt.
30. Mobil has failed on several occasions to submit Quarterly Reports within 30 days of receipt.
31. Env-Wm 512.02(k) states "failure to submit the quarterly activity report or to enclose the fees due, shall result in the assessment of penalties and interest pursuant to RSA 147-B:8.
32. RSA 147-B:A, V states "Failure to file a report by the required date or to enclose fees due shall result in the assessment of a 10 percent penalty to be added to the amount of fees due for that month. If no fees are due, a penalty of \$1 per day shall be assessed. Said penalty shall immediately accrue and thereafter the overdue fees and the penalty shall bear interest at the rate established by the Internal Revenue Service effective on the first business day of the calendar year. To this rate shall be added 2 percent. In determining the monthly rate, that figure shall be rounded off to the nearest quarter percent. The department may waive all or any portion of penalties or interest for good cause."
33. Mobil has accrued late fees in the amount of \$312.87.
34. As of the date of this Notice, Mobil has not paid the accrued late fees owed to the Division.

IV. VIOLATIONS ALLEGED

1. Mobil has violated Env-Wm 504.01(c) by failing to submit a notification form for the Site for the hazardous waste activities conducted at the Site.
2. Mobil has violated Env-Wm 512.02(i) by failing to submit quarterly reports within 30 days of receipt of the quarterly report.
3. Mobil has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste.
4. Mobil has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."
5. Mobil has violated Env-Wm 807.06(b)(5) by failing to seal all containers of used oil destined for recycle.
6. Mobil has violated 807.06(b)(6) by failing to prevent discharges of used oil to the soil.

V. PROPOSED ADMINISTRATIVE FINES

1. For the violation identified in IV.1. above, Env-C 612.05(b) specifies a fine of \$1,000.
2. For the violation identified in IV.2. above, Env-C 612.08(f) specifies a fine of \$250 per quarterly report not submitted. For the violation noted above, the Division is seeking a total fine of \$500 for the delinquent 2003 Second and Third Quarterly Reports. In addition, Mobil owes an additional \$312.87 in delinquent hazardous waste generator late fees which will be combined with the fine for a total of \$812.87.
3. For the violation identified in IV.3. above, Env-C 612.09(b) specifies a fine of \$2,000 per calendar day or portion thereof that the discharge is not cleaned-up. For the violation noted above, the Division is seeking a total fine of \$2,000.
4. For the violation identified in IV.4. above, Env-C 612.10(a)(3) specifies a fine of \$250 per tank that is not labeled. For the violation noted above, the Division is seeking a total fine of \$250.
5. For the violation identified in IV.5. above, Env-C 612.10(b)(4) specifies a fine of \$500 per tank that is not sealed. The Division is not seeking a fine at this time for the violation identified in IV.5 above.
6. The Division is not seeking a fine at this time for the violation identified in IV.6 above.

The total fine being sought is \$4,062.87.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Mobile has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, April 26, 2004, at 2:30 pm in Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, Mobil is required to respond to this notice.** Please respond **no later than March 26, 2004**, using the enclosed colored form as follows:

1. If Mobil plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If Mobil chooses to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Mobil wishes to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Mobil's interest in settling.

Mobil is not required to be represented by an attorney. If Mobil chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Mobil wishes to have a hearing but are unable to attend as scheduled, Mobil must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Mobil does not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in Mobil's absence in accordance with Env C 204.09.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Mobil committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Mobil committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Mobil proves, by a preponderance of the evidence**, applies in this case:

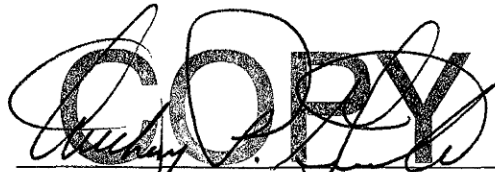
1. The violation was a one-time or non-continuing violation, **and** Mobil did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Mobil did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Mobil was making a good faith effort to comply with the requirement that was violated.
3. Mobil has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Mobil's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Muneer Alam d/b/a North Elm Street Mobil committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Mobil's opportunity to present testimony and evidence that Mobil did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Mobil has any evidence, such as photographs, business records or other documents, that believes show that Mobil did not commit the violation(s) or that otherwise support Mobil's position, Mobil should bring the evidence to the hearing. Mobil may also bring witnesses (other people) to the hearing to testify on Mobil's behalf.

If Mobil wishes to have an informal meeting to discuss the issues, Mobil must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Mobil has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.



Anthony P. Giunta, P.G. Director
DES Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Mark Harbaugh, DES Legal Unit
Michael J. Walls, Assistant Commissioner, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Ray Gordon, Supervisor, RIMS
Carl Woodbury, Supervisor, SIS
Tammy Calligandes, SIS
Public Information Officer, DES PIP Office

***** RETURN THIS PAGE ONLY *****

**MUNEER ALAM D/B/A NORTH ELM STREET MOBIL IS REQUIRED BY LAW TO
RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN March 26, 2004

APPEARANCE On behalf of Muneer Alam d/b/a North Elm Street Mobil.

_____ I will attend the hearing scheduled for Monday, April 26, 2004 at 2:30 a.m. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

Signature Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of Muneer Alam d/b/a North Elm Street Mobil.

_____ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$4,062.87 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature Date

Name (please print or type): _____

Title: _____

Phone Number: _____

**RETURN THIS PAGE ONLY TO:
Michael Sclafani, Legal Assistant
Department of Environmental Services ~ Legal Unit
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095**

ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.state.nh.us

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Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.

HWC 03-054

Mobil Gas Station, 1602 Elm St., Manchester, NH



